

## REMARKS/ARGUMENTS

### *Status*

After entry of this amendment claims 5-9, 28, and 30-37 will be under examination.

In this amendment claims 1-4, 11, 13, 16, 20, 22, 24, and claims 26-27 are canceled.

Cancellation of the claims is without prejudice to future prosecution of the subject matter of the canceled claims. Claims 5-8 and 28 are amended. New claims 30-37 are added. Claims 10, 12, 14-15, 17-19, 21, 23, and 29 are withdrawn. The withdrawn claims have been amended and now depend directly or indirectly from claim 8.

The claims have been amended to focus on a commercially valuable embodiment of the invention, and are directed to a multi-layered hydrophilic polymeric material. Support for the amendments is replete in the specification (e.g., paragraphs [0055]-[0065] and [0083]-[0098]) and original claims (e.g., original claims 8, 9, 11, 13, 16, 20, 22, 24, and 26). Claim 8 has been amended for clarity to refer to *first* and *second* layers. No change in scope is intended by this amendment and it will be understood that the material of claim 8 may comprise additional layers. Support for new claim 30 is replete in the specification and is found in original claim 27. Support for new claims 33-37 is replete in the specification (e.g., paragraphs [0055] - [0065]).

### *Obviousness-Type Double Patenting*

Claims 4-7, 27 and 28 were provisionally rejected under the doctrine of obviousness-type double patenting in view of claims 1-4 of pre-grant publication US 2004/024653 (corresponding to copending application No. 10/890936).<sup>1</sup> This provisional rejection was not applied to claim 8, and is thus mooted by the amendment of claims 5-7 and 28 to depend from claim 8 and the cancellation of claims 4 and 27.

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<sup>1</sup> App. No. 10/890936 is a continuation-in-part of App. No. 10/240993, which was inadvertently not included in the list of applications on page 8 of applicant's last response.

*Rejections Under 35 U.S.C. §102(b)*

Claims 4-9, 27 and 28 were rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Pat. No. 5,180,585 ("the '585 patent"). Applicants respectfully traverse. The '585 patent describes an antimicrobial composition comprising an inorganic core material, a primary surface coating which may be silver, silver oxide, silver halides, copper, copper (I) oxide, copper (II) oxide, copper sulfide, zinc oxide, zinc sulfide, zinc silicate and mixtures thereof (see col. 4, lines 24-30), and a secondary coating such as silica, silicates, borosilicates, aluminosilicates, alumina, aluminum phosphate, or mixtures thereof (see col. 4, lines 43-45). Thus, the '585 patent teaches tri-layer particles unlike the copper oxide particles of the present invention. Further, the '585 patent teaches that the secondary coating is a necessary component, and functions as a barrier between the antimicrobial particle and polymer matrix in which it may be incorporated.

Anticipation requires that each and every element as set forth in the claim is described, either expressly or inherently, in a single prior art reference. The '585 patent does not describe a hydrophilic polymeric material comprising a layer containing water-insoluble particles consisting essentially of copper oxide, as recited in the claims. Further, the '585 patent does not describe a multi-layered polymeric material comprising a hydrophilic polymeric layer containing water-insoluble particles of copper oxide encapsulated within, and a second hydrophilic polymeric layer which is substantially free of such water-insoluble particles, as recited in original claims 8-9 and all of the currently pending claims. Applicants request this rejection be withdrawn.

*Withdrawn claims*


Applicants respectfully traverse the restriction of claim 29. Applicants submit that the there would have been no undue burden in examining product claim 29, which depended from and included all of the limitations of a product claim being examined.

The withdrawn claims have been amended and now all depend directly or indirectly from claim 8. Applicants respectfully request rejoinder upon determination that claim 8 is allowable.

*Conclusion*

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 650-326-2400.

Respectfully submitted,



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